

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6922 OF 2006

M/s.S.M. Textiles ... Petitioner

V/s.

Malappa Ramappa Rampure ... Respondent

Mr.M.S. Topkar for Petitioner
Mr.S.S. Tambekar for Respondent

CORAM: SMT.NISHITA MHATRE, J.

DATED: MARCH 26, 2007

P.C.:

Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. The Petitioner has challenged the award of the Labour Court in Reference (IDA) No.9 of 1998. According to the Petitioner, although the brother of the Proprietor S.M. Gaud was examined before the Labour Court, it has not considered his evidence. In fact, an observation has been made in para 19 that the solitary witness examined for the First Party (the employer) is Mr.A.G. Thorwat. Again, in para 28, the Labour Court has observed "neither S.M. Gaud nor P.M. Gaud have appeared before the Court and filed affidavit testimony nor having got cross-examined before the Labour Court".

3. There is an affidavit on record of P.M. Gaud, who is the brother of the proprietor S.M. Gaud besides the affidavit of A.G. Thorwat. He has been cross-examined as well. Besides the evidence of A.G. Thorwat, the employer has obviously led evidence of P.M. Gaud. The Labour Court has not considered the testimony of P.M. Gaud at all while deciding the Reference under the mistaken notion that he had not deposed before the Court. This is apparently an error on the face of the record.

4. In such circumstances, the impugned award of the Labour Court is set aside. The matter is remanded to the Labour Court. The Labour Court will decide the Reference on the basis of the evidence already on record including the affidavit and cross-examination of P.M. Gaud within three months from today.

5. Writ Petition is disposed of accordingly.